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**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

LEROY S. ROBINSON, JR.  Appellant,  v.  ROBERT A. McDONALD, Secretary of Veterans Affairs,  Appellee.	Vet.App. No. 15-715
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**NOTICE TO THE COURT OF RELEVANT INFORMATION**

Pursuant to this Court's May 3, 2013 ruling in *Solze v. Shinseki*, 26 Vet. App. 299 (2013), Appellant, through his counsel, informs the Court of relevant information which could affect this Court's current deliberations with respect to its July 14, 2016 and August 10, 2016 Orders of the Court.

As the court ordered in *Solze*, both parties have a continuing duty to bring to the court's attention any facts or development which *may conceivably affect an outcome*. *Id.* at 302.

*Cf. Douglas v. Donovan*, 704 F.2d 1276, 1279 (D.C. Cir. 1983) ("As officers of this court, counsel have an obligation to ensure that the tribunal is aware of significant events that may bear directly on the outcome of litigation.").

In an effort to move forward with Appellant's case, despite the pending nature of the Court's deliberations regarding the Appellee's compliance with its July 14, 2016 and August 10, 2016 Orders, Appellant's counsel has continued to make a forthright attempt to review her client's paper claims file.<sup>1</sup>

As stated in Appellant's August 24, 2016 notice, Counsel received a late day phone call from Garrick Younger, the Acting VSCM at the Philadelphia Regional Office. After a brief conversation, Counsel advised that she would check her calendar and contact him the following day to set up an appointment. After two unsuccessful attempts on August 24<sup>th</sup> and August 25<sup>th</sup> 2016<sup>2</sup> leaving voice-mail messages (providing her requested appointment times), Counsel found an email address for Mr. Younger and wrote an email to him on August 26, 2016, with a "cc'd" copy to Thomas Sullivan, Esq. Both Mr. Sullivan and Mr. Younger responded, and all confirmed that the appointment was scheduled for August 30, 2016 at 11:00 a.m. Counsel asked Mr. Younger to provide

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<sup>1</sup> In Appellant's August 24, 2016 Notice to Court, Counsel details the facts and circumstances of all communications between the General Counsel and Appellant's counsel regarding the paper claims file review.

<sup>2</sup> Mr. Younger did not return the phone calls.

the name and contact information of the contact person at the VARO who would be responsible for facilitating the appointment. Mr. Younger provided two names, ie. David Antoninich and Shannon Cowan.

Counsel arrived for her appointment at the Philadelphia VARO on August 30, 2016. Anticipating a mix-up as well as confusion, she arrived early (at 10:00 a.m.) in order to check-in and to provide the VA sufficient time to set up a meeting room for the 11:00 a.m. review.

The receptionist contacted Mr. Antoninich who greeted Counsel at 10:15 a.m.. He advised counsel that he had not been notified of the appointment and that he has been away from the office all last week until this date. He also advised Counsel that Ms. Cowan was out of the office. Counsel was stunned that Mr. Antononich requested the identifying information for Mr. Robinson's file.<sup>3</sup>

At 11:30 a.m., Mr. Antoninich returned to the reception area to advise Counsel that Mr. Robinson's file was not on the premises. He provided further details as follows:

- The paper folder arrived at the VARO on August 16, 2016
- On August 17, 2016, the file was sent to VCIP
- On August 19, 2016 the file was sent away to an off-site scanning vendor, because its paper contents have not yet been scanned into VBMS.

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<sup>3</sup> With a scheduled appointment, it is expected that the VARO would have identified the file and have it available and awaiting review.

After 15 additional minutes of further discussions and explanations, both Mr. Antoninich and Mr. Younger advised Appellant's Counsel that the paper claims file is not at the VARO, despite the fact that the VA had confirmed just days earlier that the paper file was physically at the VARO and available for a CAVC Rule 10(d) review.

This Court should note that Appellant's counsel re-arranged her schedule and traveled a significant distance away from her office for an **confirmed** paper review appointment of her client's claims file. However, due to VA dysfunction and/or insolence, the file review appointment never occurred.

The Court should further note that the Secretary's August 24, 2016 pleading advises the Court that the VARO was in contact with Appellant's Counsel on August 23, 2016 to set up an appointment. However, on this day (today), the VARO representative confirmed that the file was sent to VCIP on August 17, 2016, then later sent to a scanning vendor on August 19, 2016. If this is the case, why would be VARO agree to Counsel's appointment to see the file on August 30, 2016?

Counsel asserts that the Secretary's behavior in this regard is inexcusable. The Court should not dismiss these failures as another "mistake." It is time for this Court to bring down the gauntlet on the VA. The VA should no longer be afforded "leave" to "navigate" its way out of this situation, by arguing "no harm". Cumulatively, VA's actions are causing significant harm to Mr. Robinson and to all veterans. VA's actions have also caused harm to Appellant's counsel and the Government fisc.

It would appear that there are no meaningful methods, other than sanctions, which should remind the VA that it too must comply with the law.

As of this date, August 30, 2016, the Appellant continues to be denied the right under this Court's Rule 10(d) to review his paper claims file.

Wherefore, Mr. Robinson respectfully notifies this Court of significant facts and developments which could be relevant to the Court's deliberations in this matter.

Respectfully Submitted,

/s/Tara R. Goffney

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Leroy S. Robinson, Jr.  
Electronically submitted on August 30, 2016